

DISCUSSION PAPER

1. TITLE

Prevention Enforcement Policies

2. ISSUE

In October 2005, the Board of Directors (BOD) hosted a symposium to seek input from stakeholders on the current and possible future state of the occupational health and safety system in BC. As part of its health and safety initiative, the BOD also directed WCB staff to develop a forceful, rigorous and comprehensive strategy and policy amendment package to reduce serious injuries and fatalities.

This paper addresses the need to amend WorkSafeBC's ("WCB") policies for enforcing the prevention requirements of the *Workers Compensation Act* ("Act").

3. BACKGROUND

Section 107 of the *Act* states that the main purpose of Part 3 is to promote occupational health and safety, and to protect workers and other persons present at workplaces from risks to their health and safety. The WCB prefers to obtain compliance by providing information, advice and encouragement. However, the preference for cooperative means cannot detract from the WCB's obligation to enforce the *Act* and the regulations. Experience has shown that obtaining compliance cannot depend entirely on persuasion and discussion. The *Act* provides the WCB with various methods of enforcement that are discussed in more detail below.

3.1 Law and Policy

The main methods of enforcement contained in the *Act* are as follows:

- (a) An order issued under section 187. These are the normal compliance orders issued when a Board officer finds violations during an inspection or accident investigation.
- (b) An order issued under section 190 or 191 stopping the use of equipment or closing down a workplace.
- (c) A suspension or cancellation of a certificate under section 195, usually a certificate issued to a First Aid Attendant.
- (d) An administrative penalty imposed on an employer under section 196.
- (e) Levying claim costs on an employer under section 73(1).
- (f) Prosecution for violations in the courts under Division 15 of Part 3 of the *Act* or under the *Criminal Code* of Canada.
- (g) Application to the courts for an injunction under section 198.

Policies D12-187-1 to D12-196-10 and D24-2-1 to D24-73-1 contain some criteria for all of these methods except the last two, though the policies are not comprehensive. An additional process permitted by policy D12-196-11 is to issue warning letters instead of imposing an administrative penalty in a specific case.

4. DISCUSSION

Since the sections of the *Act* contain broad discretions, there is a need for clear policy to ensure that consistent and effective enforcement action occurs whenever it is required. This paper will discuss certain specific issues in these policies that may impede the effectiveness of the WCB's enforcement. However, before addressing these, the paper will consider the need for a general enforcement policy providing guidance on how the WCB approaches enforcement as a whole.

4.1 General enforcement policy

Just as workplace parties must exercise due diligence in complying with the prevention requirements of the *Act*, the WCB must exercise diligence in enforcing these requirements and using the powers granted by the *Act*. Since the WCB has limited resources for enforcement, it is desirable to apply those resources in a rational and consistent way on the basis of an overall plan. This will allow the WCB to both treat workplace parties fairly and justify its own actions as well as allowing workplace parties to know what to expect from the WCB.

The WCB's enforcement plan will be partly an administrative matter of organizing and directing its resources. However, a policy supporting the plan is also desirable. It is not sufficient just to have policies on the individual statutory powers as needed. The WCB should also provide a general policy structure under which enforcement is carried out. This will create general expectations of its officers as to the thinking and decision making process they must go through in deciding whether enforcement is needed, and if so, what type.

Where violations are discovered, a Board officer typically issues compliance orders under section 187 of the *Act* instructing the persons responsible to rectify the violation. It would not be appropriate to levy penalties or impose other additional sanctions every time such a compliance order is issued, but in every case there must be some basic consideration of whether additional enforcement is needed. The current policies provide criteria for applying some, but not all, of the enforcement methods. They do not provide criteria for determining which is the most appropriate when several methods might apply and in determining whether any additional enforcement at all is needed. A general enforcement policy will fill these gaps.

In determining the content of the general enforcement policy, the three elements discussed below are important:

- *Purpose of enforcement.* The purpose statement in section 107 indicates that the WCB should not use enforcement simply to punish for past violations. The primary concern is to prevent future injuries, diseases and deaths. Therefore, the aim of enforcement is to motivate compliance and deter non-compliance. In addition, for some specific methods of enforcement, such as closure orders, a major objective is to physically prevent a hazard from causing harm.
- *Effectiveness as motivator or deterrent.* Each of the methods of enforcement is effective when used in appropriate circumstances, whether alone or in conjunction with other methods. What will be the most effective method in a particular case depends on the circumstances of the violation, including
 - the level of hazard or risk caused by the violation,
 - whether an injury, disease or death has occurred,
 - the level of knowledge of the party, and
 - the party's prior conduct.

More serious circumstances generally warrant a more serious remedy. If, for example, an employer has paid prior penalties without changing behaviour, it may not be effective to apply another penalty. Prosecution may be a more effective action. Effectiveness also depends on the consequences resulting from each method of enforcement and the potential impact on the party. Different parties will respond differently to the various consequences.

- *Administrative considerations.* Some methods of enforcement are simpler to apply, use less resources and have a more predictable outcome. For example, compliance orders are simpler than penalties and penalties are simpler than prosecutions. Where two alternative methods should be equally effective in a particular situation, it makes sense to use the least costly and most predictable.

This discussion suggests that the methods of enforcement can be put into a hierarchy. At one end are the more straightforward and less serious methods such as compliance orders under section 187; at the other end are the most complex and serious such as prosecutions and injunctions. Where a particular case fits into the hierarchy will depend on the circumstances of the situation and the offender. A new draft General Enforcement Policy, D12-000-1, is set out in Appendix B.2.

To put enforcement activity in context, it may be helpful to consider the following statistics:

Activity	2004	2003
Inspection hours	81,254	83,254
Orders issued	23,092	24,176
Warning letters sent	161	279
Penalties imposed (includes any levies of claim costs)	117	69

4.2 Issues in specific policies

A summary of the issues and proposed policy revisions is set out in Appendix B.1. Appendix B.2 sets out the existing policies, and shows the proposed changes. It is not proposed to discuss all the proposed changes in this paper, but the following are noteworthy:

4.2.1 Issue of compliance orders under Policy D12-187-1

The existing policy D12.187.1 states that “Where violations of the Act or regulations are found, orders will be issued to the persons responsible for the failure to comply”. The following concerns exist with this policy:

- The policy removes the WCB’s discretion to issue compliance orders granted by section 187 of the *Act* and is therefore arguably in conflict with the *Act*.
- The removal of discretion hampers an officer’s ability to adopt a more consultative approach when the officer determines that an order is not required to achieve compliance.
- The policy has led some officers to rely on the discretion granted by the *Act*. They have responded to some regulatory violations by providing workplace parties with information and/or assistance rather than by issuing an order. When this occurs, officers must rely on their judgment as to whether or not to issue an order in a particular circumstance. Neither they, nor external stakeholders, have the benefit of any guidance in policy about the factors to be considered or what the likely decision will be in a particular situation.

Accordingly, policy revision is suggested to:

- reflect the discretion provided for in the *Act* and used in current practice, and
- provide WCB officers and external stakeholders with guidance about what factors the WCB will consider when deciding whether to issue an order and how these factors may be weighed.

A suggested revised policy is set out under policy D12-187-1 in Appendix B.2.

4.2.2 Criteria for imposing administrative penalties in Policy D12-196-1

Amendments have been made to this policy to integrate it with the proposed new General Enforcement policy, D12-000-1. These include deleting the item “need to provide an incentive to the employer” from the list of factors considered in determining whether an administrative penalty should be imposed. This is covered by general

references to motivation and deterrence in the same policy as well as new policy D12-000-1

The current practice is that penalties may be imposed on employers for violations of any section of the *Act* or regulations that employers are required to comply with. It makes no difference whether the requirement to comply exists because the section specifically imposes a responsibility on the “employer” or the responsibility results from the application of other sections of the *Act* or regulations. However, employers have sometimes challenged the Board’s authority to impose a penalty where the employer is required to comply with a section because the employer falls within another category of persons with responsibilities under the *Act* or regulations such as an “owner” or “supplier”. It is proposed to clarify the situation by including the existing practice in policy.

4.2.3 The high risk list (11 deadly sins) in Policy D12-196-2

Policy D12-196-2 sets out a list of offences that are presumed to be high risk. This means that their occurrence can result in automatic penalty consideration under policy D12-196-1. This policy provides a means for the WCB to signal to the community that a certain group of offences are of particular concern and will routinely lead to penalties.

The current list was created in the mid-1980s and has not changed since. Attempts have been made to update this list, but these have failed for two main reasons:

- Lack of agreement by employer and worker stakeholders as to what should be on the list.
- The difficulty of producing objective data to show that the items currently on the list should be on the list and whether other items should be added. The reason is that the WCB does not in general keep statistical data that relates injuries to specific violations of the *Act* and regulations.

The original list prepared in the 1980s was not likely based on comprehensive statistical data. It was essentially based on the experience of Board officers at the time. In recent years, data mining has confirmed, in most cases, the intuitive decisions made almost 20 years ago. Many of these types of violations are still a leading cause of fatal and serious injuries and occupational disease. However, it is still true that any revision to the list must in part be based on practical experience, with more objective data being used where available.

The Policy and Research Division has reviewed past accident reports generated by the WCB’s prevention systems and toured the province consulting with prevention officers as to what should be on the list. In addition, data mining techniques have been used to re-evaluate the original “11 deadly sins” as well as identify other practices that have emerged as high risk. This information indicates that over the past five years, approximately 7% of all traumatic fatal injuries and 2% of the most serious injuries resulted from violations included in the present list of high-risk violations. About 9% of

the costs of fatal injuries and about 3% of serious injury costs can be attributed to these violations. Expanding the list to include falls from elevation, certain materials handling, guarding and log hauling violations would capture approximately 14% of fatal injuries and about 32% of serious injuries. This represents about 18% of fatal injury costs and almost 40% of the costs of serious injuries.¹

Conditions caused by such violations such as failure to locate underground services, failure to coordinate activities or provide treatment and emergency transport for injured workers in remote locations are known through practical experience to be high risk.

Amendments to policy D12-196-2 have been prepared on the basis of this review and are included in Appendix B.2. These amendments essentially retain and consolidate the existing items and add the new items referred to above.

The current policy assumes the listed violations are high risk “in the absence of evidence showing to the contrary”. Concerns have arisen because employers who have committed a violation on the list will often, after the event, obtain evidence such as engineering reports to show that in retrospect the violation was not high risk. However, at the time when the violation occurred, the employer may have had no reason to believe that the violation did not involve high risk and in effect took a chance that it was not high risk. It is suggested that such situations should still be penalized as “high risk”. The purpose of the policy is not just to prevent high risk offences occurring but to motivate employers to make whatever testing or inquiries are needed to determine what may be required to work safely before rather than after the work is done.

4.2.4 Penalty Amounts under Policy D12-196-6

Four main issues have been considered under this policy as well as some other matters. The four main matters are: the relevance of an employer’s knowledge at the time of the violation; the scope of the Category A and B tables that determine the basic amount of penalties, the discretion to vary the basic amount, and repeat penalties.

Employer knowledge

The policies on administrative penalties contain several references to an employer’s knowledge or willfulness:

- Policy D12-196-1 states that a ground for considering an administrative penalty is that “an employer knowingly or with reckless disregard violates one or more sections of Part 3 or the regulations. Reckless disregard includes where a violation results from ignorance of the *Act* or regulations due to a refusal to read them or take other steps to find out an employer’s obligations.”

¹ Traumatic injuries to the fingers made up about 25% of serious injuries and tended to skew the figures in the lockout and guarding violation categories. These were evaluated separately. If they had been included, the expanded list of high risk violations would cover almost 50% of serious injuries and their costs.

- Policy D12-196-1 includes as a factor to be considered “the extent to which the employer was aware or should have been aware of the hazard, or that the Act or regulations were being violated”.
- For the purpose of determining the amount of a penalty, policy D12-196-6 distinguishes between higher Category A penalties for high risk violations and lower Category B penalties for other violations. Also included in Category A is situations where “non-compliance was wilful or with reckless disregard”.
- Policy D12-196-6 allows for upward or downward variation of the basic penalty amounts on the basis of a consideration of certain listed factors, including “whether the employer knew about the situation giving rise to the violation”.
- In more serious cases where the employer acts with “wilful or reckless disregard”, policy D12-196-6 allows penalties of up to \$250,000 or the maximum amount.

The problem with these policies is that they use the different terms “knowingly”, “aware” and “willfully” without making clear what they mean and whether they are intended to mean the same thing or something different. There are various degrees and types of knowledge that might be covered by these words, involving different levels of culpability. There may be knowledge as to the facts producing the violation, the risk or hazard it involved and/or that the facts involved a violation. Furthermore, the fact that a person knows from past occasions that a certain state of affairs involves a violation does not necessarily mean that he or she deliberately committed the violation; they may simply have been careless at the time when the violation occurred.

For these reasons, it is proposed to amend the policies D12-196-1 and D12-196-6 to make clearer the different levels of knowledge that have to be considered and state that a penalty should not automatically fall into Category A because there was some degree of knowledge. Rather, the employer’s level of knowledge at the time in question should be evaluated in each case and, where required in exceptional cases, the penalty amount increased. Alternatively, higher penalties might be considered in serious cases under the special provisions in the policy for penalties up to \$250,000 and the maximum.

Scope of the Category A and B tables

As with the case of “wilful or with reckless disregard” discussed above, it is proposed to remove the reference to “serious injury or illness or death” from Category A penalties. This is because it is the nature of the violation (high risk or not high risk) that should determine the level of the penalty. The occurrence of an injury is only evidence that a high risk violation occurred. Though the occurrence of an injury is a factor to be considered in imposing penalties, it should be part of the discretion rather than a determinative factor as to the amount. For similar reasons, it is proposed to remove the references to fatalities and serious permanent impairments in the special provisions for penalties up to \$250,000 and the maximum.

The basic penalty amounts determined under Categories A and B depend on the employer’s payroll. The current policy provides for payroll at the time of the decision to

be used. However, delays in decision making sometimes result in the payroll being significantly different at the time of the decision in comparison with at the time of the violation that lead to the penalty. This may result from, for example, from a corporate restructuring or a change in the level of the employer's business. It is suggested that the more appropriate time for determining payroll is at the time of the violation rather than the decision, and a policy amendment is proposed to effect that change. It is also proposed to give the WCB authority to use other amounts where the actual payroll is unavailable or unrepresentative. This might apply to the fishing industry for example where the persons receiving the penalties may be different from the persons paying assessments.

Discretion to vary the basic penalty amount

The current policy allows the basic amount determined under the Category A and B tables to be varied by 30% upwards or downwards having regard to listed factors. In order to increase consistency in decision making, it is proposed to state that penalty amounts should only be varied in exceptional situations. Since the variations are to be exceptional, it is proposed to delete the existing list of specific variation factors and rely on the general criteria in new the new General Enforcement policy, D12-000-1. There are in any event several problems with the existing factors, for example, as to their vagueness. On the other hand, it is proposed to increase the maximum percentage variation factor from 30 to 50. This is in part to accommodate the removal of "wilful and reckless disregard" from Category A but also to generally give discretion for higher or lower penalty amounts in exceptional cases.

Repeat penalties

The policy provides for increasing the basic amount for repeat penalties for the same violation within three years. The time currently runs from the date of the prior decision to impose a penalty to the date of the decision to impose the later penalty. It is considered that the dates of the violations are more appropriate for determining the time rather than the dates of the penalty decisions, and it is proposed to amend the policy accordingly.

A specific statement has also been included in the policy to cover the situation where the penalty process on the prior violation has not been complete at the time of the second violation. This proposes that the second penalty be considered a repeat where the employer had been given written notice of the prior penalty's being considered even though not actually levied at that time.

4.2.5 Warning letters under Policy D12-196-11

The WCB has a longstanding practice of, in some cases, sending warning letters following initial violations stating that an administrative penalty will be considered if further violations occur. This practice is not specifically provided for in the *Act*, but is implicit in the WCB's authority to administer the *Act*. The practice is currently supported

by policy D12-196-11. The purpose of this policy is to attempt to obtain compliance in a consultative fashion without having to apply enforcement.

There are several concerns with the current wording of the policy:

- The policy is confined to administrative penalties. There is no reason why warning letters should not be applicable to any method of enforcement.
- The policy requires that the criteria for applying an administrative penalty have already been met. It may be desirable to send a warning letter before they are met when there are grounds for believing that future violations may occur.
- The policy might be construed as providing a license not to comply for a period after a warning letter is received.
- The policy might lead to a conclusion that a warning letter is required before an administrative penalty is applied.

Revisions to the policy are proposed to deal with these issues. They state that warning letters may be used for any method of enforcement, and may be used before full grounds for applying the method of enforcement exist. The employer is expected to make all reasonable efforts to comply as soon as the letter is received, and a warning letter is not required before a method of enforcement is used.

Warning letters in general are a controversial area: some stakeholders tend to regard them as avoiding applying enforcement while others tend to regard them as another method of enforcement that is a necessary stage in a progressive discipline process leading to a penalty. Ideally, the sending of a warning letter should be a simple communication process for the employer's benefit and to promote compliance. It should not be considered either as an alternative to enforcement or an enforcement method, and should not be a pre-requisite to using a method of enforcement. In order to deflate the controversy, it might be preferable to delete the policy on the basis that it is only an administrative matter, no different from an oral discussion with a Board officer.

4.2.6 Charging claim costs under section 73(1)

Section 73(1) allows the WCB to charge the costs of a claim to an employer up to a maximum \$44,468.66² where the injury, death or disablement from occupational disease was due substantially to;

- (i) the gross negligence of an employer,
- (ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or
- (iii) the failure of an employer to comply with the orders or directions of the WCB, or with the regulations made under Part 3 of this *Act*.

There is a policy relating to this section in policy D24-73-1.

² Amount subject to annual CPI adjustments under section 25.2 of the *Act*.

It has been suggested that this section might be used more frequently as a method of enforcing the prevention requirements of the *Act* or *Regulation*. In 2004, the WCB made four decisions to charge claim costs under section 73(1); in 2005, to date, it has made one such decision.

The purpose of section 73(1) is not clear. A similar section has existed since 1922, long before the first section was enacted to authorize the WCB to issue administrative penalties or equivalent. On its face, the principle underlying the section may appear to be an insurance mechanism that employers in general should not fund the cost of injuries due to an employer's violations of health and safety requirements. On the other hand, since the amount chargeable has always been subject to a maximum, the section may appear to be imposing a penalty to motivate deterrence rather than an insurance mechanism.

Another practical consideration suggesting that the section is more appropriately regarded as a prevention enforcement tool, is that it is often difficult in practice to establish that individual injuries were caused by employer defaults. Since the *Act* sets up a no fault system, the WCB has never had a mechanism for determining fault with regard to claims in general. It is only when the prevention arm of the WCB does an accident investigation that sufficient information becomes available for this purpose. Only a very small proportion of claims are investigated in this way.

If section 73(1) is best considered as another method of enforcement of the WCB's prevention requirements, then its application should be subject to the same general principles as apply to the other methods. In particular, it should be applied when needed to motivate and deter, having regard to other methods of enforcement such as administrative penalties that may be more conveniently applied. Amendments are proposed to policy D12-73-1 stating that section 73(1) is a considered a method of enforcement that is subject to the principles set out in proposed new policy D12-000-1.

5. CONSULTATION

Stakeholders are invited to provide feedback on the draft policies. Stakeholder comments will be accepted until **June 9, 2006**. When responding, please provide your name, organization and address. Comments may be sent by mail, fax or e-mail to:

By mail: Policy and Research Division
WorkSafeBC
P.O. Box 5350, Stn. Terminal
Vancouver, B.C. V6B 5L5

By fax: 604 279-7599

By e-mail: policy@worksafebc.com

In addition, comments may be submitted through the online submission form on the WorkSafeBC website.

The Board of Directors will consider the feedback provided by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the PRD's database and may be published, including the identity of the organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

APPENDIX B.1

TABLE OF PROPOSED CHANGES TO POLICIES

Policy number and name	Proposed changes
D12-000-1 Enforcement Policy	New policy. See discussion in Part 5.1 of the paper.
D12-187-1 (Orders)	Revised to allow discretion in issuing orders but stating some criteria as to when orders will normally be issued or not issued.
D12-188-1 (Contents and Processes)	A minor revision changing the criterion for holding a post inspection conference from "where possible" to "where practicable".
D12-191-1 (Orders to Stop Work)	Minor language changes.
D12-195-1 (Cancellation of Certificates)	No change proposed.
D12-196-1 (Administrative Penalties - Criteria for Imposing)	<p>The following changes have been made (See discussion in Part 5.2.2 of the paper):</p> <ul style="list-style-type: none"> • Clarified that only one of the grounds for imposing a penalty needs to be met. • The function of the list of additional factors in the latter half of the policy is clarified by relating it to the new policy D12-000-1 and policies D12-196-2 and D12-196-3. • Changed the list of grounds and list of factors under a general theme in the package of attempting to deal more clearly and appropriately with situations where an employer acts "wilfully" or "knowingly" – See discussion in Part 5.2.4 of the paper and policy D12-196-6. • Deleted the item in the list of factors referring to the "need to provide an incentive to the employer" as this is covered by general references to motivation and deterrence in the same policy as well as new policy D12-000-1. • Added a statement that penalties may be imposed on employers for violations of any sections that employers are required to comply with. It makes no difference whether the requirement to comply exists because the section specifically imposes a responsibility on the "employer" or the responsibility results from the application of other sections of the <i>Act</i> or regulations. A penalty may be imposed where employer is required to comply with a section because the employer falls within another category of persons receiving responsibilities under the <i>Act</i> or regulations such as an "owner" or "supplier".
D12-196-2 (Administrative Penalties - High Risk Violations)	<p>The following changes are proposed (See discussion in Part 5.2.3 of the paper):</p> <ul style="list-style-type: none"> • The definition of "high risk" has been removed as this is now contained in the new policy D12-000-1. • The policy is reworded to state the listed violations are "deemed" to be high risk and removes "in the absence of evidence showing the contrary". • A new list of high risk offences is proposed that consolidates existing items and adds new items. See discussion in Part 5.2.3 of the paper. • An explicit statement is added that if a violation on the high risk list is found compliance orders will be issued to the persons responsible and a penalty will be considered.
D12-191-3 (Administrative Penalties - Prior Violations and Orders)	No change proposed.

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Policy number and name	Proposed changes
D12-196-4 (Administrative Penalties - Authority to Impose)	Authority to impose levying of claim costs under section 73 is granted to the Worker and Employer Services Division Vice-President or assignee rather than the Prevention Vice-President.
D12-196-6 (Administrative Penalties - Amount of Penalty)	<p>The following changes are proposed (See discussion in Part 5.2.4 of the paper):</p> <ul style="list-style-type: none"> • Removed the reference to "wilful or with reckless disregard" from Category A penalties. This is because of the uncertainty of the meaning of wilful and the range and variety of degrees of knowledge that the employer may have. Though the employer's knowledge is a factor to be considered in imposing penalties, it should be part of the discretion rather than a determinative factor. In extreme cases, such situations may fall under the "\$250,000" and "maximum" headings of the policy. • Removed the reference to "serious injury or illness or death" from Category A penalties. This is because it is the nature of the violation (high risk or not high risk) that should determine the level of the penalty. The occurrence of an injury is only evidence that a high risk violation occurred. Though the occurrence of an injury is a factor to be considered in imposing penalties, it should be part of the discretion rather than a determinative factor as to the amount. • In order to increase consistency, state that penalty amounts should only be varied in exceptional situations. Since the variations are to be exceptional, delete the existing list of specific variation factors and rely on the general criteria in new Policy D12-000-1. There are, in any event, several problems with regard to these factors, for example as to vagueness. The maximum percentage variation factor is increased from 30 to 50, in part to accommodate the removal of "wilful and reckless disregard" from Category A but also to generally give discretion for higher or lower penalty amounts in exceptional cases. • Changed to use payroll in the year before the violation rather than before the penalty decision and added a general discretion to adopt another appropriate method of calculating payroll where normal payroll figures are unavailable. • Clarified the section on multi-site employers. • Amended the wording regarding penalties up to \$250,000 and the maximum to remove the reference to occurrences of fatalities/serious impairments and to make clear that the employer has to have the highest degree of knowledge to fall within those categories. • With regards to repeat penalties, determine the three-year period with reference to violation dates rather than penalty decision dates. A specific statement has been included to cover the situation where the penalty process on the prior violation has not been complete at the time of the second violation. This proposes counting the first penalty where the employer is given written notice of its being considered even though not actually levied at that time.
D12-196-7 (Administrative Penalties - Payment of Penalty)	No change proposed.
D12-196-8 (Administrative Penalties - Payment of interest on Successful Appeal)	No change proposed.

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Policy number and name	Proposed changes
D12-196-9 (Administrative Penalties - Prosecution Following Penalty)	No change proposed.
D12-196-10 (Administrative Penalties - Due Diligence)	No change proposed.
D12-196-11 (Administrative Penalties - Warning Letters)	<p>The following changes are proposed:</p> <ul style="list-style-type: none"> • Generalized the policy so that it could be applied to any method of enforcement. • Allow warning letters to be used where the criteria for applying the method of enforcement in question have not yet been met but there are grounds for believing that further violations may occur. • Clarified that a warning letter is not intended as a license not to comply for a period after it is received. • Included an explicit statement that a warning letter is not required before a method of enforcement is used. See discussion in Part 5.2.5 of the paper.
D24-2-1 (Imposition of Levies- Independent Operators)	Minor consequential change.
D24-73-1 (Imposition of Levies- Charging of Claim Costs)	Amendments are proposed stating that section 73(1) is a considered a method of enforcement that is subject to the principles set out in proposed new policy D12-000-1. See discussion in Part 5.2.6 of the paper.

**APPENDIX B.2
PROPOSED NEW POLICY**



WORKING TO MAKE A DIFFERENCE

PREVENTION MANUAL

RE: Enforcement Policy

ITEM: D12-000-1

BACKGROUND

1. Explanatory Notes

Divisions 12 and 15 of Part 3 of the *Act* give the Board powers to enforce the requirements of the *Act* and regulations, including the issuing of compliance orders, stop work orders, cancellations of certificates, administrative penalties and prosecutions in the courts. The Board prefers to promote workplace health and safety through cooperation, but workplace parties have responsibilities to comply with the requirements of the *Act* and or the regulations on their own initiative. The Board must take action to enforce the *Act* and regulations where appropriate.

In addition to the criteria for exercising the enforcement powers set out in the *Act*, the Board has policies governing some individual powers, notably Policies D12-187-1 to D12-196-11 and D24-2-1 to D24-73-1. The criteria in the *Act* and/or policies often permit the Board a choice as to which method of enforcement to use in a particular case and require the exercise of judgment. The purpose of this policy is to set out general principles applied by the Board in exercising that judgment.

2. The Act

See the sections of the *Act* set out under the policy for each method of enforcement.

POLICY

Set out below are general principles followed when determining in the circumstances of a particular case whether to use an enforcement method and in choosing between methods where more than one is available under the *Act* and policies.

1. In applying the methods of enforcement provided by the *Act*,
 - (a) *The limits on each method imposed by the Act must be followed*, for example, the restriction of administrative penalties to employers. The statutory defences of due diligence under sections 196(3) and 215 and of following instructions under protest allowed by section 216 must be recognized.
 - (b) *Policy guidelines for using a method of enforcement must be considered*. For example, policy D12-196-1 provides criteria to be considered in deciding whether to impose an administrative penalty.

**APPENDIX B.2
PROPOSED NEW POLICY**



WORKING TO MAKE A DIFFERENCE

PREVENTION MANUAL

2. *Where a Board officer finds a violation of the Act or regulations, the Board officer will consider issuing orders under section 187 of the Act to the persons responsible under the criteria in policy D12-187-1.*
3. *Not every violation will automatically result in an administrative penalty or other sanction in addition to an order under section 187. On the other hand, where required, a penalty or other additional sanction will be considered for a first time violation. The fact that the recipient of the order has since complied with it is not in itself a reason for withholding a penalty or other additional sanction.*
4. *In determining when additional enforcement methods should be applied, and which methods, regard must be had to their purpose. The main purpose of the enforcement methods is to motivate compliance and deter violations of the Act and regulations by the person committing the violation and other persons. However, for certain measures a major purpose is also to physically prevent a hazard from causing harm, for example, stop work orders under section 191 of the Act.*
5. *Many factors must be considered in determining whether an enforcement method will be effective in motivating or deterring, including where applicable:*

(a) Degree of hazard or risk

The fact that a violation causes a high risk of serious injury or illness, or death, is an indicator that a more serious enforcement response is required. In determining whether there was high risk, consideration is given to:

- the likelihood of an injury, illness or death occurring;
- the number of workers affected; and
- the likely seriousness of any injury or illness.

A violation will be deemed to be high risk if it appears on the list in policy D12-196-2.

(b) Consequences of violation

The occurrence of a serious injury or illness, or death, may be an indicator that a more serious enforcement response is required. However, since the main object is to motivate future compliance and deter future violations, use of the various enforcement methods is not limited to where an accident, injury or illness has actually occurred as a result of a past violation.

**APPENDIX B.2
PROPOSED NEW POLICY**



WORKING TO MAKE A DIFFERENCE

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(c) Urgency of situation

Some methods of enforcement such as administrative penalties and prosecutions take a longer time to apply. The degree of risk caused by a violation may require an immediate remedy such as an order stopping the use of equipment or closing down a workplace under sections 190 and 191 or canceling a certificate under section 195.

(d) State of mind

A more culpable state of mind such as wilfulness, reckless disregard or a high degree of negligence is an indicator that a more serious enforcement response is required. The state of mind of the violator needs to be considered with regard to all the relevant circumstances, including

- the occurrence of the facts giving rise to the violation,
- whether those facts might result in a high risk of serious injury or illness, or
- whether those facts might give rise to a violation of the *Act* or regulations.

(e) Past conduct

The extent to which a person has taken measures to comply prior to the violation being found must be considered. The fact that a method of enforcement has been applied in the previous three years for the same violation is an indicator that a more serious method is now required. "Same violation" includes where, though a different section is cited, the violation is essentially the same.

(f) Conduct or circumstances following the violation

The fact that a violation is remedied after the violation is discovered does not mean that no penalty or additional sanction should be imposed. If this were the case, there would be no incentive for workplace parties to comply with the *Act* or regulations until after a violation was found by a Board officer. On the other hand, a person's conduct in response to the discovery of a violation, for example, a declared refusal to comply, may provide an indicator that the Board should apply a more serious enforcement method than might otherwise be required.

**APPENDIX B.2
PROPOSED NEW POLICY**



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(g) Impact of method of enforcement

Different methods of enforcement have different consequences, including stopping work activities, requiring payment of a penalty, or creating adverse publicity. These consequences will not have the same impact on all parties. In determining the most appropriate enforcement method, it will be considered which consequence will motivate and deter to the greatest extent.

(h) Conduct of other workplace parties

The extent to which the violation was due to the conduct of other persons beyond the party's control will be considered.

These factors (a) to (h) relate to initiating an enforcement method. Other factors may be relevant to deciding consequential issues, for example, the size of the firm in determining the amount of an administrative penalty.

6. *If more than one method of enforcement is likely to be equally effective, the method or methods using the least resources will normally be selected.* The methods will typically be applied in the following sequence, but this may be varied in light of the need to motivate and deter in any case or to physically prevent a situation from causing harm:

- (a) compliance order under section 187,
- (b) order under section 190 or 191 stopping the use of equipment or closing down a workplace, or a suspension or cancellation of a certificate under section 195,
- (c) administrative penalty on an employer under section 196,
- (d) levying claim costs on an employer under section 73(1),
- (e) prosecution for violations in the courts under Division 15 of Part 3 of the *Act*,
- (f) application to the courts for an injunction under section 198.

Instead of exercising these powers in a particular case, or as a precursor to the exercise of a power, the Board may choose to send a letter of warning pursuant to Policy D12-196-11.

7. *More than one method of enforcement will be used at the same time if required to effectively motivate and deter or to physically prevent a situation from causing harm, and the Act or policy does not exclude or limit the use of one method with another method.* This may sometimes include application of a method of enforcement in addition to an order under section 187 where first time violations are discovered.

APPENDIX B.2
PROPOSED NEW POLICY



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8. *Even though another method is thought sufficient to motivate and deter, a prosecution in the courts may be chosen because the circumstances are so reprehensible that the public interest require a public adjudication process.*

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



**RE: Compliance Orders –
General Authority**

ITEM: D12-187-1

BACKGROUND

1. Explanatory Notes

~~Section 187(1) provides a broad general authority for the Board to make orders for carrying out matters and things regulated, controlled or required by Part 3 or the regulations. This includes authority to make orders in a variety of specific situations set out in section 187(2).~~

~~Powers to make orders are also found in other sections of the Act.~~

Section 187 of the Act gives the authority to issue various types of compliance orders. A common type of order is one issued under section 187(2)(b), which requires that a party take certain steps to ensure compliance with specified sections of the Act or regulations. This policy provides guidance on when Board officers will exercise their discretion to issue such orders.

2. The Act

Section 187:

- (1) The Board may make orders for the carrying out of any matter or thing regulated, controlled or required by this Part or the regulations, and may require that the order be carried out immediately or within the time specified in the order.
- (2) Without limiting subsection (1), the authority under that subsection includes authority to make orders as follows:
 - (a) establishing standards that must be met and means and requirements that must be adopted in any work or workplace for the prevention of work related accidents, injuries and illnesses;
 - (b) requiring a person to take measures to ensure compliance with this Act and the regulations or specifying measures that a person must take in order to ensure compliance with this Act and the



- regulations;
- (c) requiring an employer to provide in accordance with the order a medical monitoring program as referred to in section 161;
 - (d) requiring an employer, at the employer's expense, to obtain test or assessment results respecting any thing or procedure in or about a workplace, in accordance with any requirements specified by the WCB, and to provide that information to the WCB;
 - (e) requiring an employer to install and maintain first aid equipment and service in accordance with the order;
 - (f) requiring a person to post or attach a copy of the order, or other information, as directed by the order or by an officer;
 - (g) establishing requirements respecting the form and use of reports, certificates, declarations and other records that may be authorized or required under this Part;
 - (h) doing anything that is contemplated by this Part to be done by order;
 - (i) doing any other thing that the WCB considers necessary for the prevention of work related accidents, injuries and illnesses.
- (3) The authority to make orders under this section does not limit and is not limited by the authority to make orders under another provision of this Part.

POLICY

~~Employers and other persons~~ Persons covered by the *Act*, **including employers, workers, supervisors, owners, and suppliers**, have an obligation to comply with the *Act* and regulations. It is not sufficient simply to obey orders of the Board's officers after a violation, injury or disease has occurred.

~~Where violations of the Act or regulations are found, orders will be issued to the persons responsible for the failure to comply.~~

When a Board officer determines that a violation of Part 3 of the Act or regulations has occurred, the officer may issue an order to the person(s)



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responsible for the failure to comply. In exercising this discretion, the following guidelines apply:

- An order will be issued if the violations in question fall within the list of offences set out in Policy D12-196-2.
- An order will generally be issued for violations not covered by Policy D12-196-2, particularly when a high risk violation exists or there has been repeated non-compliance.
- The officer may decide not to issue an order where compliance can be achieved by other means, for example, when the officer determines that a minor, low risk violation, or an administrative violation, has occurred that the violator quickly remedies.

~~In operations where cooperation and compliance are generally present, and minor, low hazard violations are noted, Board officers may issue oral orders at their discretion, but shall check back to ensure compliance before leaving the site. In such cases, a brief explanatory note shall be included in the office memo portion of the Inspection Report. Where compliance has not been achieved by the end of the inspection, the Board officer shall issue a written order.~~

PRACTICE

~~There is no PRACTICE for this item. For any other relevant PRACTICE information, readers should consult the Guidelines available on the WorkSafeBC website.~~

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



RE: Orders –
Contents and Process

ITEM: D12-188-1

BACKGROUND

1. Explanatory Notes

Section 188 sets out the contents and process requirements in relation to orders. Subject to the terms of the relevant sections, these requirements apply to all the powers to issue orders under Part 3. They are not limited to orders issued under the Board's general authority in section 187.

2. The Act

Section 188:

- (1) An order may be made orally or in writing but, if it is made orally, must be confirmed in writing as soon as is reasonably practicable.
- (2) An order may be made applicable to any person or category of persons and may include terms and conditions the Board considers appropriate.
- (3) If an order relates to a complaint made by a person to the Board or an officer, a copy of the order must be given to that person.
- (4) An officer of the Board may exercise the authority of the Board to make orders under this Part, subject to any restrictions or conditions established by the Board.

POLICY

After an inspection, the Board officer must complete a report, but its completion may be deferred until any required investigation is completed. The report may contain one or more orders, or no orders, depending on whether violations of the regulations were observed and the number and type of any observed violations. If an officer has observed no violations, this will be stated in the report.

Where **practicable possible**, the officer will hold a post-inspection conference with management having responsibility and authority to comply with the orders.



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The worker representative who accompanied the inspection will be invited to the conference. If the worker representative normally designated for this purpose has been unable to attend the inspection, the designated worker representative will be invited as well, if now available. Other parties involved may also be invited at the discretion of the officer. The purpose of the conference is to ensure that the parties understand the orders.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



**RE: Administrative Penalties –
Criteria for Imposing**

ITEM: D12-196-1

BACKGROUND

1. Explanatory Notes

Section 196(1) sets out the criteria for imposing an administrative penalty.

An administrative penalty must not be imposed if the employer exercised “due diligence” to prevent the failure, non-compliance or conditions to which the penalty relates. Item D12-196-10 sets out more information with respect to “due diligence”.

2. The Act

Section 196(1):

The Board may, by order, impose an administrative penalty on an employer under this section if it considers that

- (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
- (b) the employer has not complied with this Part, the regulations or an applicable order, or
- (c) the employer’s workplace or working conditions are not safe.

POLICY

The main purpose of administrative penalties and similar levies is to motivate the employer receiving the penalty and other employers to comply with the *Act* and regulations.

The Board will consider imposing an administrative penalty when **one or more of the following grounds exist:**

- an employer is found to have committed a violation resulting in high risk of serious injury, serious illness or death;



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- an employer is found in violation of the same section of Part 3 or the regulations on more than one occasion. This includes where, though a different section is cited, the violation is essentially the same;
- an employer is found in violation of different sections of Part 3 or the regulations on more than one occasion, where the number of violations indicates a general lack of commitment to compliance;
- an employer has failed to comply with a previous order within a reasonable time;
- an employer ~~knowingly or with reckless disregard violates~~ **takes action or fails to take action that results in a violation of one or more sections of Part 3 or the regulations knowing that a violation will result, or showing reckless disregard as to whether a violation will result.** Reckless disregard includes where a violation results from ignorance of the *Act* or regulations due to a refusal to read them or take other steps to find out an employer's obligations; or
- the Board considers that the circumstances may warrant an administrative penalty.

If **one or more of the above grounds** ~~violations or other circumstances~~ requiring consideration of a penalty have occurred, the **factors set out in Policy D12-000-1 will be considered in determining whether a penalty is required in the specific case to motivate compliance or deter violations. In the context of administrative penalties, these factors involve consideration, where applicable, of the elements discussed in Policies D12-196-2 and D12-196-3 as well as the following** ~~following~~ additional factors will also be considered in deciding whether to propose or to levy the penalty:

- whether the employer has an effective, overall program for complying with the *Act* and the regulations;
- whether the employer has ~~otherwise~~ exercised due diligence to prevent the failure, non-compliance or conditions to which the penalty relates;
- whether the violations or other circumstances have resulted from the independent action of workers who have been properly instructed, trained and supervised;



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- the potential seriousness of the injury or illness that might have occurred, the number of people who might have been at risk and the likelihood of the injury or illness occurring;
- the past compliance history of the employer, including the nature, number and frequency of violations, and the occurrence of repeat violations;
- the extent to which the employer was aware or should have been aware of **the facts giving rise to the violation**, the **risk or hazard**, or that the *Act* or regulations were being violated;
- ~~the need to provide an incentive for the employer to comply;~~
- whether an alternative means of enforcing the regulations would be more effective; and
- other relevant circumstances.

Administrative penalties may be imposed on employers for violations of any sections that employers are required to comply with. It makes no difference whether the requirement to comply exists because the section specifically imposes a responsibility on the “employer” or the responsibility results from the application of other sections of the *Act* or regulations. A penalty may be imposed where the employer is required to comply with a section because the employer falls within another category of persons receiving responsibilities under the *Act* or regulations such as an “owner” or “supplier”.

PRACTICE

For any relevant PRACTICE information, readers should consult the Guidelines available on the ~~WCB~~ **WorkSafeBC** website.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



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**E: Administrative Penalties –
High Risk Violations**

ITEM: D12-196-2

BACKGROUND

1. Explanatory Notes

The criteria set out in Item D12-196-1 require consideration of whether a violation involves high risk of serious injury, serious illness or death.

2. The Act

See D12-196-1.

POLICY

~~Whether a violation involves high risk of serious injury, serious illness, or death will be determined in each case on the basis of the available evidence concerning:~~

- ~~• the likelihood of an injury, illness or death occurring;~~
- ~~• the number of workers affected; and~~
- ~~• the likely seriousness of any injury or illness.~~

~~Violations on the list set out below are assumed to be high risk in the absence of evidence showing the contrary:~~

- ~~1. Working in an excavation over four feet deep without adequately supporting or sloping the sides of the excavation or adopting other safeguards allowed by the regulations.~~
- ~~2. Working within the specified minimum distances from unguarded overhead energized high voltage electrical conductors without complying with the requirements of the regulations.~~
- ~~3. Working on equipment that is not locked out when required.~~



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4. ~~Permitting workers to be exposed to situations or conditions that are immediately dangerous to life or health.~~
5. ~~Permitting inadequately protected workers to be exposed to conditions that are likely to cause a chronic health effect.~~
6. ~~When operating mobile equipment:
 - (a) ~~failing to have rollover protective structures (ROPS) on equipment where required by the regulations,~~
 - (b) ~~failing to install or use seat belts where required by regulation.~~~~
7. ~~Failing to fell all dangerous trees as required by the regulations.~~
8. ~~Using domino falling procedures.~~
9. ~~Leaving cut-up trees.~~
10. ~~Failing to take appropriate measures to control the fall of trees, for example, not leaving sufficient holding wood, carelessly cutting off corners of holding wood, not placing the backcut higher than the undercut, failing to use wedges or failing to have wedging equipment immediately available.~~
11. ~~Permitting workers, other than the faller and other persons permitted by the regulations, to be within the minimum distance of two tree lengths of the tree being felled.~~

~~Even though a violation is not on the list, an administrative penalty may be considered on the basis that the evidence in that case shows the violation posed a high risk to workers.~~

Certain work practices and conditions are known to result in or contribute to a high risk of serious injury, serious illness, or death. Violations associated with these work practices and conditions set out on the list below are deemed to be high risk:

1. **Failing to ensure all dangerous trees are felled as required by the Occupational Health and Safety Regulation (OHSR).**
2. **Failing to ensure that safe falling standards are followed. Safe falling standards include but are not limited to:**



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- leaving sufficient holding wood,
 - placing the backcut higher than the undercut,
 - using appropriate wedges or having appropriate wedging equipment immediately available,
 - the use of push trees only to overcome a falling difficulty (refers to domino falling),
 - the selection, clearing and use of a safe escape route from the base of the tree being felled,
 - ensuring that the tree being felled does not unnecessarily brush standing trees, or
 - taking appropriate steps if a tree cannot be completely felled (refers to cut-up trees).
3. Failing to ensure that workers, other than the faller or operator of a mechanized falling machine and other persons permitted by the OHSR, maintain the required minimum distance of two tree lengths from the tree being felled; or that workers are clear of a hazardous area before a tree or log is bucked.
 4. Failing to maintain haul roads in a safe operating condition.
 5. Failing to maintain and ensure the safe operation of a logging truck. This includes but is not limited to:
 - failing to meet the service instructions of the manufacturer and to maintain a maintenance log,
 - driving too fast for road conditions, or
 - operating the vehicle while impaired by fatigue or other causes.
 6. Failing to install and maintain operator protective structures (OPS) on mobile equipment where required by the OHSR.
 7. Failing to install or ensure the use of seat belts on mobile equipment where required by the OHSR.
 8. Permitting entry into an excavation over four feet deep without adopting safeguards allowed by the OHSR or as specified by a professional engineer.
 9. Permitting any worker, work, tool, machine, equipment or material within the specified minimum distances from unguarded overhead energized high voltage electrical conductors without complying with the requirements of the OHSR.



10. Failing to locate underground utility services where that failure results in a high risk condition caused by a ruptured natural gas line or contact with a buried electrical cable.
11. Failing to ensure that a fall protection system is used when required by the OHSR.
12. Failing to protect workers engaged in materials handling from the risks of being struck by or crushed by large, heavy or bulky material or objects.
13. Permitting work on equipment that is not locked-out, isolated and secured when required by the OHSR.
14. Failing to guard tools, machinery and equipment when required by the OHSR. This includes point of operation, power transmission parts and conveyors.
15. Permitting entry into a confined space without implementing a confined space entry procedure as required by the OHSR.
16. Permitting exposure to situations or conditions that are immediately dangerous to life or health.
17. Permitting the exposure of inadequately protected workers to conditions that could to cause a chronic health effect. These include but are not limited to:
 - exposure to asbestos or other similarly designated substances,
 - biohazardous material, or
 - serious infectious diseases.
18. Failing to provide first aid treatment and emergency transport for seriously injured workers in remote locations more than 2 hours surface travel time from a hospital.
19. Failing to co-ordinate work activities where it is demonstrated that the failure resulted in a high risk condition.

When a Board officer determines that one of the above violations has occurred, he or she is required to make orders in writing to the responsible parties under sections 187(1), 190(1), 190(2) or 191(1) and consider the imposition of an administrative penalty under section 196(1) or other applicable method of



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enforcement. Where the officer is of the opinion that a recommendation for administrative penalty or other applicable method of enforcement may not be appropriate because circumstances mitigate the risk of the observed practice or condition, the officer will document the circumstances and reasons for not recommending an administrative penalty or other applicable method of enforcement. An administrative penalty or other applicable method of enforcement may be recommended if further instances of such noncompliance with the OHSR or Board orders are observed.

Even though a violation is not on the list, an administrative penalty or other applicable method of enforcement may be considered on the basis that the evidence in the case shows the violation posed a high risk of serious injury, serious illness or death to workers.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



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RE: Administrative Penalties –
Amount of Penalty

ITEM: D12-196-6

BACKGROUND

1. Explanatory Notes

The Board is authorized to impose administrative penalties on employers for failure to comply with Part 3 of the *Act* and the regulations, and under certain other conditions. Section 196(3) provides that the Board must not impose an administrative penalty where the employer exercised due diligence. Section 196(2) ~~provides that the Board must not impose an administrative penalty greater than \$500,000.~~ **sets out the maximum administrative penalty amount. The initial maximum was \$500,000, but** Commencing January 1, 2004, this maximum is subject to adjustment under section 25.2 of the *Act* on January 1 of each year.

~~The *Act* does not specify the amount of an administrative penalty that may be imposed in particular situations.~~

2. The Act

Section 196(2):

An administrative penalty which is greater than ~~\$500,000~~ **\$533,195.03** must not be imposed under this section.

POLICY

Amounts of administrative penalties will be determined under this POLICY. No administrative penalty will be imposed where the employer exercised due diligence to prevent the failure, non-compliance or conditions to which the penalty relates.

1. “Basic amount” of the penalty

(a) Tables for determining “basic amounts”

The following tables contain the guidelines used by the Board in determining the “basic amount” of an administrative penalty.

APPENDIX B.2



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Category A Penalties – ~~Serious injury or illness or death; or High risk of serious injury or illness or death; or non-compliance was wilful or with reckless disregard~~

Assessable Payroll Range (\$)	Penalty Amount (\$)
up to 500,000	2.5% of payroll, or 2,500, whichever is greater
500,001 – 1,000,000	12,500 + 2.25% of payroll over 500,000
1,000,001 – 1,500,000	23,750 + 2.0% of payroll over 1,000,000
1,500,001 – 2,000,000	33,750 + 1.75% of payroll over 1,500,000
2,000,001 – 2,500,000	42,500 + 1.5% of payroll over 2,000,000
2,500,001 – 3,000,000	50,000 + 1.25% of payroll over 2,500,000
3,000,001 – 3,500,000	56,250 + 1.0% of payroll over 3,000,000
3,500,001 – 4,000,000	61,250 + .75% of payroll over 3,500,000
4,000,001 – 4,500,000	65,000 + .5% of payroll over 4,000,000
4,500,001 – 5,000,000	67,500 + .25% of payroll over 4,500,000
Over 5,000,000	68,7250 + .125% of payroll over 5,000,000, or 75,000, whichever is less

Category B Penalties – Any Other Violations

Assessable Payroll Range (\$)	Penalty Amount (\$)
up to 500,000	1.0% of payroll, or 1,000, whichever is greater
500,001 – 1,000,000	5,000 + .36% of payroll over 500,000
1,000,001 – 1,500,000	6,800 + .32% of payroll over 1,000,000
1,500,001 – 2,000,000	8,400 + .28% of payroll over 1,500,000
2,000,001 – 2,500,000	9,800 + .24% of payroll over 2,000,000
2,500,001 – 3,000,000	11,000 +.2% of payroll over 2,500,000
3,000,001 – 3,500,001	12,000 +.16% of payroll over 3,000,000
3,500,001 – 4,000,000	12,800 +.12% of payroll over 3,500,000
4,000,001 – 4,500,000	13,400 +.08% of payroll over 4,000,000
4,500,001 – 5,000,000	13,800 +.04% of payroll over 4,500,000
Over 5,000,000	14,000 +.02% of payroll over 5,000,000, or 15,000, whichever is less

The “basic amount” of the administrative penalty will be determined on the basis of the employer’s assessable payroll for the most recent full calendar year **immediately preceding the violation or circumstances giving rise to the penalty** for which figures are available at the time the penalty is imposed. The “payroll” for independent



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operators with Personal Optional Protection is the amount for which they have purchased coverage.

Where assessable payroll figures are not available, or where the Board has reasonable grounds for believing that the employer has underreported its payroll, the Board may, at its option:

- **apply the minimum table amounts,**
- **rely on an estimate of annual payroll made in accordance with applicable assessment policies,**
- **conduct an audit to determine an annual payroll, or**
- **adopt another appropriate method of determining the amount of the penalty.**

(b) Multi-site employers

The “basic amount” is calculated on the basis of the employer’s total payroll for all its locations. Where a firm has more than one location, the Board may, in determining the “basic amount” ~~of the penalty,~~ use the assessable payroll at the location where the violation occurred, **if the employer provided that:**

- **demonstrates that** the violation has resulted from an occupational health and safety failure at that location rather than a general “program failure” on the part of the employer, and
- ~~the employer provides the necessary~~ **sufficient, verified** payroll information for that location to the Board and cooperates in any audit that the Board considers necessary.

A “program failure” includes failure to:

- effectively communicate with all locations regarding health and safety concerns;
- provide adequate training to managers and others who implement site health and safety programs;
- make local management accountable for health and safety performance; **or**
~~and~~
- provide local management with sufficient resources for health and safety issues.



(c) Variation of basic amount of penalty factors

The purpose of setting a basic penalty amount by the tables set out in part (a) of this policy is to promote consistency. Employers of a similar size committing similar violations should normally receive the same penalty. On the other hand, there may be exceptional cases where there are specific circumstances of such significance as to render the basic penalty amount inappropriate having regards to the objectives of motivation and deterrence set out in Policy D12-000-1. In such cases, ~~in each individual case,~~ the "basic amount" of the penalty may be varied by up to ~~50%~~ **30% having regard to the factors set out in Policy D12-000-1.** ~~having regard to the circumstances, including the following factors:~~

- ~~(a) nature of the violation;~~
- ~~(b) nature of the hazard created by the violation;~~
- ~~(c) degree of actual risk created by the violation;~~
- ~~(d) whether, the employer knew about the situation giving rise to the violation;~~
- ~~(e) the extent of the measures undertaken by the employer to comply;~~
- ~~(f) the extent to which the behaviour of other workplace parties has contributed to the violation;~~
- ~~(g) employer history; and~~
- ~~(h) whether the financial impact of the penalty would be unduly harsh in view of the employer's size; and~~
- ~~(i) any other factors relevant to the particular workplace.~~

2. Penalties up to \$250,000

With the approval of the President or delegate, the Board may **depart from the guidelines in Item 1 and** impose an administrative penalty of up to \$250,000 where:

- (a) the employer has committed a high risk violation ~~willfully or with reckless disregard;~~ and
- (b) ~~a worker has died or suffered serious permanent impairment as a result,~~ **the employer took action or failed to take action knowing that a high**



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risk violation would result, or showed reckless disregard as to whether a high risk violation would result.

3. Penalties up to Statutory Maximum

With the approval of the President or delegate, the Board may **depart from the guidelines in Item 1 and** impose an administrative penalty up to the statutory maximum where

- (a) the employer has committed a high risk violation ~~willfully or with reckless disregard; and~~
- (b) ~~multiple fatalities have occurred or a number of workers have suffered serious permanent impairment as a result of the violation; and~~ **the employer took action or failed to take action knowing that a high risk violation would result, or showed reckless disregard as to whether a high risk violation would result, and**
- (c) there is evidence of a systemic disregard by the employer for worker safety, such as a history of serious repeated non-compliance.

4. Repeat penalties

~~Where an administrative penalty is imposed within three years of a decision imposing an additional assessment or a prior administrative penalty for the same violation, Where the violation (“later violation”) for which an administrative penalty is being considered is a repeat of a prior violation (“prior violation”) occurring within the three years immediately preceding the date of the later violation, the penalty will be calculated as a “repeat penalty”. This~~ **A repeat violation** includes where, though a different section is cited, the violation is essentially the same.

The penalty will be treated as a repeat penalty where no decision to impose a penalty regarding the prior violation had been made before the later violation occurred, but the employer had received written notice that a penalty was being considered. The fact that a request for review or appeal has been filed of the decision to impose a prior penalty does not in itself prevent a penalty being considered as a repeat penalty.

~~The amount of R~~repeat penalties will be calculated as follows:

- (a) The “basic amount” for the ~~current~~ **repeat** penalty, including any variation, will be calculated in accordance with 1. **“Basic amount of the penalty”** above.



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- (b) The “basic amount“ for the ~~current~~ repeat penalty, including any variation, will then be increased as follows:

Number of additional assessments or prior penalties being considered under this part of the policy	Increase to “basic amount”
One	x2
Two	x3
Three	x6
Four	x12
Five	x24

5. Recovery of costs saved through non-compliance

The amount of any costs saved or profit made by the employer through committing the violation shall, as far as is known, be added to the penalty amount determined under 1, 2, 3, or 4 above and forms part of the administrative penalty.

6. Statutory maximum

In no case will the Board impose an administrative penalty greater than the statutory maximum then in effect.

PRACTICE

For any relevant PRACTICE information, readers should consult the Guidelines available on the ~~WCB~~WorkSafeBC website.

EFFECTIVE DATE: to be determined
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:



RE: ~~Administrative Penalties –~~
Warning Letters

ITEM: D12-196-11

BACKGROUND

1. Explanatory Notes

~~As an alternative to proceeding with an administrative penalty, the~~**The** Board may decide to send ~~the employer a letter warning to~~ **a violator** that an administrative penalty **or other type of sanction** will be considered if further violations of the *Act* or regulations occur.

There is no specific reference to “warning letters” in the *Act*. However, **it is implicit** ~~section 196(1) does not require the Board to impose an administrative penalty in every case where the criteria have been met. The Board may choose not to impose a penalty. Implicit in the~~ **Board’s statutory enforcement powers** ~~authority to make that decision is~~**that it has** the authority to warn ~~violator~~**the employer** that, under certain conditions, **a particular type of enforcement action will occur** ~~an administrative penalty may be levied in the future. As well, the~~**The** Board has the mandate under section 111 to be concerned with the maintenance of reasonable health and safety standards and to ensure that information in this respect is provided to persons concerned with the administration of Part 3.

2. The Act

Section 196(1):

The Board may, by order, impose an administrative penalty on an employer under this section if it considers that

- (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
- (b) the employer has not complied with this Part, the regulations or an applicable order, or
- (c) the employer’s workplace or working conditions are not safe.



Section 111(1):

In accordance with the purposes of this Part, the Board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.

Section 111(2)(d):

In carrying out its mandate, the Board has the following functions, duties and powers:

-
- (d) to ensure that persons concerned with the purposes of this Part are provided with information and advice relating to its administration and to occupational health and safety and occupational environment generally

POLICY

Where violations have occurred that provide grounds for proposing an administrative penalty **or using another enforcement power**, it may be concluded that **under the criteria in the Act and policies the use of that power a penalty** is not warranted at that time to motivate the employer to comply. **Alternatively, the occurrence of violations may give rise to concern that future violations may occur that will provide future grounds for using an enforcement power.** The Board may in these cases then send a ~~warning~~ letter to the senior management of the employer **or to the other person concerned**, advising that **use of the enforcement power a penalty** will be considered if the violations are repeated **or further violations occur.**

In the case of a letter sent to an employer, The Board will, where practicable, send a copy of the letter to the joint committee or worker health and safety representative at the workplace, as applicable, and the union if the workers at the workplace are represented by the union. **In the case of letters sent to other persons than an employer, notification to other parties will be provided where appropriate.**

When a follow-up inspection reveals continued or repeat violations after there has been a reasonable time to comply with the warning letter, the Board will normally issue repeat orders and consider an ~~administrative penalty or prosecution~~ **appropriate method of enforcement. What is a reasonable time will depend on the nature of the violation and the circumstances of the case. However, the recipient of the letter is**



WORKING TO MAKE A DIFFERENCE

PREVENTION MANUAL

expected to take, or begin taking, actions required to avoid future violations as soon as is reasonably practicable. A failure to do this may result in a method of enforcement being applied even though a reasonable time may not have elapsed for total compliance to be achieved.

The issue of a warning letter is not required before an administrative penalty is imposed or another method of enforcement is used.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE: to be determined

AUTHORITY:

CROSS REFERENCES:

HISTORY:

APPLICATION:



WORKING TO MAKE A DIFFERENCE

PREVENTION MANUAL

**RE: Imposition of Levies –
Charging of Claim Costs**

ITEM: D24-73-1

BACKGROUND

1. Explanatory Notes

Section 73 authorizes the Board to charge claims costs to the employer in certain circumstances. The maximum amount the Board may levy is adjusted annually in accordance with the Consumer Price Index under section 25 of the *Act*. Starting January 1, 2004, the maximum amount is \$44,468.66.

2. The Act

Section 73:

(1) If

- (a) an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and
- (b) the Board considers that this was due substantially to
 - (i) the gross negligence of an employer,
 - (ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or
 - (iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 3 of this Act,

the Board may levy and collect from that employer as a contribution to the accident fund all or part of the amount of the compensation payable in respect of the injury, death or occupational disease, to a maximum of \$44,468.66.



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- (2) The payment of an amount levied under subsection (1) may be enforced in the same manner as the payment of an assessment may be enforced.

POLICY

Section 73(1) is a method for the Board to enforce the prevention requirements of the Part 3 of the *Act* and *Regulations* made under it, and therefore is subject to the general principles set out in Policy D12-000-1.

This section may be applied if:

- the grounds for an administrative penalty under Item D12-196-1 are met; and
- a serious injury or disablement from occupational disease, or a death, results from a violation of the regulations.

A claim may be reopened at any time in the future and further costs may be incurred after the decision under section 73(1). The Board will charge the employer:

- the costs incurred up to the time of the decision; and
- any additional amounts that result from matters still under consideration by the Compensation Services Division, the Review Division or the Workers' Compensation Appeal Tribunal.

Where appropriate, the Board will apply the policies and practices set out in the following Items to the charging of claim costs under section 73(1):

- **D12-000-1**
- D12-196-1, -2, -3, -4;
- D12-196-8;
- D12-196-10, -11; and
- D16-223-1.

PRACTICE

There is no PRACTICE for this Item.

APPENDIX B.2



WORKING TO MAKE A DIFFERENCE

PREVENTION MANUAL

EFFECTIVE DATE: to be determined

AUTHORITY:

CROSS REFERENCES:

HISTORY:

APPLICATION: